

## CEILING-PRICED COMMERCIAL SERVICES

[FP 09/04] [FAR 52.232-7 - 12/02]

- (a) General. The Subcontractor shall submit invoices to JPL as indicated in the Schedule and discussed below. Payment to the Subcontractor for hours worked by the Subcontractor employees listed in the Schedule (or if there is no listing of personnel by name in the Schedule, then by personnel of the classification listed in the Schedule) will be based on the actual hours worked by such personnel in accordance with paragraph (b) below. Reimbursement of the Subcontractor for travel and related expenses or allowances shall be allowable only if stated in the Schedule and shall be subject to the provisions below.
- (b) Timekeeping.
  - (1) For work to be performed for JPL at a JPL location, the Subcontractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the workshift that are worked by its employees. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time, whichever is later. Mealtime deductions shall be appropriately determined by the Subcontractor. The Subcontractor is responsible for establishing a process that monitors its personnel leaving JPL premises during the workday.
  - (2) For work performed at a location other than JPL, the Subcontractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the workshift that are worked by its employees. Unless otherwise provided for in this Subcontract, the Subcontractor shall maintain timekeeping records in accordance with form JPL 1725, "Minimum Timekeeping Requirements for Time-and-Material or Labor-Hour Type Procurements to be Performed at Off-Lab Facilities."
- (c) Hourly Rate.
  - (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule or Subcontract Work Order by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time. Meal time deductions will be as determined by the Subcontractor. At the end of the day, working time will not be computed beyond the end of the designated approved shift unless overtime is authorized. Invoices shall be submitted weekly, (unless another interval is specified in the Schedule) to the attention of the JPL Accounting Section. Invoices shall contain the accuracy representation as required by JPL, and shall be submitted by one of the authorized representatives specified in the Schedule. Promptly after receipt of each invoice, the Institute shall, except as otherwise provided in this Subcontract, and subject to the terms of (f) below, pay the invoice as approved by JPL.
  - (2) Unless otherwise prescribed in the Schedule, the Institute shall withhold five percent of the amounts due under this Subcontract for commercial services, or such other amount which the Institute considers necessary to protect the interest of the Institute and the Government, but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Subcontractor as provided in paragraph (g) below.
  - (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Subcontractor having performed work on an overtime basis.
- (d) Other Direct Costs. Allowable costs for other direct costs authorized in the Schedule shall be determined by JPL in accordance with Subpart 31.2 of FAR in effect on the date of this Subcontract and any corresponding implementing or supplementing provisions in the NFS. The Subcontract shall support all other direct costs claimed by submitting copies of paid invoices or by other substantiation acceptable to JPL.
- (e) Ceiling Price. The Institute shall not be obligated to pay the Subcontractor any amount in excess of the ceiling price in the Schedule in the absence of a statement in a Unilateral Modification, or other Subcontract modification, increasing the ceiling price.
- (f) Audit. At any time before final payment under this Subcontract, JPL may audit or have audited the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers that are found by JPL not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval

of the voucher or invoice designated by the Subcontractor as the "completion voucher" or "completion invoice", and upon compliance by the Subcontractor with all terms of this Subcontract (including, without limitation, terms of paragraphs (g) and (h) below), the Institute shall promptly pay any balance due the Subcontractor. The completion invoice or voucher shall be submitted by the Subcontractor as promptly as practicable following completion of the work under this Subcontract, but in no event later than six months (or such longer period as JPL may approve in writing) from the date of completion.

- (g) Release. The Subcontractor, and each assignee under an assignment entered into under this Subcontract and in effect at the time of final payment under this subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Subcontract, a release discharging the Institute, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Subcontract, subject only to the following exceptions:
  - (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Subcontractor.
  - (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising out of performing this Subcontract, that are not known to the Subcontractor on the date of the execution of the release, and of which the Subcontractor gives notice in writing to JPL not more than six years after the date of the release or the date of any notice to the Subcontractor that the Institute is prepared to make final payment, whichever is earlier.
  - (3) Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of the Institute or the Government against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of this Subcontract relating to patents.
- (h) Refunds. The Subcontractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Subcontractor or any assignee, that arise under the materials or other direct costs portion of this Subcontract and for which the Subcontractor has received reimbursement, shall be paid by the Subcontractor to the Institute. The Subcontractor and each assignee, under an assignment entered into under this Subcontract and in effect at the time of final payment under this Subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Subcontract, an assignment to the Institute of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to JPL.